

AMENDED IN ASSEMBLY MARCH 20, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1828

Introduced by Assembly Member Donnelly

February 18, 2014

An act to ~~amend Section 16010 of the Welfare and Institutions Code, relating to foster care; add Chapter 4 (commencing with Section 16300) to Part 4 of Division 9 of the Welfare and Institutions Code, relating to child welfare.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1828, as amended, Donnelly. ~~Foster children: health and education records. Child welfare: investigations: video and audio recording.~~

Existing law requires the state, through the Department of Social Services and county welfare departments, to establish and support a public system of statewide child welfare services to be available in each county of the state. All counties are required to establish and maintain specialized organizational entities within the county welfare department that have the sole responsibility for the operation of the child welfare services program. The Legislature has declared its intent, in providing for this statewide system of child welfare services, that all children are entitled to be safe and free from abuse and neglect.

This bill, to be known as Sammy's Law, would require a county child protective services social worker, assigned to a role that involves assuming the custody of children or conducting interviews of children or their parents in order to investigate allegations of parental abuse or neglect, to use a video and audio recorder to make recordings of his or her interactions with the children and their parents in carrying out

that role. In order for the recording requirement to apply, the child or parent is required to give his or her consent to being recorded. The bill would require the county child protective services employing the social worker to catalog and preserve the video and audio recordings, as provided.

This bill would require the prosecutor, in a criminal proceeding, to produce a copy of the above described recordings upon the request of the defendant, and if the recordings are not produced, the defendant would be entitled to an instruction stating that the missing information is presumed to be exculpatory. The bill also would require the county, in a dependency proceeding, to produce a copy of the above described recordings upon the request of the parent, and if the recordings are not produced, the county child protective services social worker would be prohibited from testifying about the missing information, and the judge would be prohibited from considering the missing information in making his or her rulings.

Because this bill would require local entities to provide a higher level of service through making and producing video and audio recordings, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Existing law requires, when a child is placed in foster care, the case plan to include a summary of the health and education information or records, including mental health information, of the child. Existing law requires a child protective agency to, as soon as possible, but not later than 30 days after initial placement of a child into foster care, provide the caregiver with the child's current health and education summary.~~

~~This bill would make technical, nonsubstantive changes to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Chapter 4 (commencing with Section 16300) is*
2 *added to Part 4 of Division 9 of the Welfare and Institutions Code,*
3 *to read:*

4
5 *CHAPTER 4. INVESTIGATION OF PARENTAL ABUSE OR NEGLECT*
6

7 *16300. This chapter shall be known, and may be cited as,*
8 *Sammy's Law.*

9 *16301. (a) A county child protective services social worker,*
10 *assigned to a role that involves assuming the custody of children*
11 *or conducting interviews of children or their parents in order to*
12 *investigate allegations of parental abuse or neglect, shall use a*
13 *video and audio recorder to make a video and audio recording of*
14 *his or her interactions with the children and their parents in*
15 *carrying out that role.*

16 *(b) In order for the requirements of subdivision (a) to apply,*
17 *the child or parent is required to give his or her consent to the*
18 *video and audio recording.*

19 *(c) (1) The county child protective services employing the social*
20 *worker shall catalog and preserve the video and audio recordings.*

21 *(2) County child protective services shall have a written policy*
22 *that outlines, at a minimum, the proper use of the equipment, the*
23 *times when the video and audio recorder is to be activated,*
24 *conditions under which it is permissible not to have the video and*
25 *audio recorder activated, the retention period of the recordings,*
26 *the method for replacing defective or malfunctioning equipment,*
27 *and a logging policy to record failures or periods when the*
28 *equipment is being repaired.*

29 *16302. (a) In a criminal prosecution, upon the request of the*
30 *defendant, the prosecutor shall produce a copy, in a reasonably*
31 *usable format, of the recordings that the county child protective*
32 *services social worker was required to make pursuant to Section*
33 *16301.*

34 *(b) If the prosecutor does not produce a copy of the recordings*
35 *upon request, the defendant is entitled to an instruction stating*
36 *that the missing information is presumed to be exculpatory.*

37 *16303. (a) In a dependency proceeding, upon the request of*
38 *the parent, the county shall produce a copy, in a reasonably usable*

1 *format, of the recordings that the county child protective services*
2 *social worker was required to make pursuant to Section 16301.*

3 *(b) If the county does not produce a copy of the recordings upon*
4 *request, the county child protective services social worker is*
5 *prohibited from testifying about the missing information, and the*
6 *missing information shall not be considered by the judge in making*
7 *his or her rulings.*

8 *SEC. 2. If the Commission on State Mandates determines that*
9 *this act contains costs mandated by the state, reimbursement to*
10 *local agencies and school districts for those costs shall be made*
11 *pursuant to Part 7 (commencing with Section 17500) of Division*
12 *4 of Title 2 of the Government Code.*

13 ~~SECTION 1. Section 16010 of the Welfare and Institutions~~
14 ~~Code is amended to read:~~

15 ~~16010. (a) When a child is placed in foster care, the case plan~~
16 ~~for each child recommended pursuant to Section 358.1 shall include~~
17 ~~a summary of the health and education information or records,~~
18 ~~including mental health information or records, of the child. The~~
19 ~~summary may be maintained in the form of a health and education~~
20 ~~passport, or a comparable format designed by the child protective~~
21 ~~agency. The health and education summary shall include, but not~~
22 ~~be limited to, the names and addresses of the child's health, dental,~~
23 ~~and education providers; the child's grade level performance; the~~
24 ~~child's school record; assurances that the child's placement in~~
25 ~~foster care takes into account proximity to the school in which the~~
26 ~~child is enrolled at the time of placement; the number of school~~
27 ~~transfers the child has already experienced; the child's educational~~
28 ~~progress, as demonstrated by factors, including, but not limited~~
29 ~~to, academic proficiency scores; credits earned toward graduation;~~
30 ~~a record of the child's immunizations and allergies; the child's~~
31 ~~known medical problems; the child's current medications, past~~
32 ~~health problems, and hospitalizations; a record of the child's~~
33 ~~relevant mental health history; the child's known mental health~~
34 ~~condition and medications; and any other relevant mental health,~~
35 ~~dental, health, and education information concerning the child~~
36 ~~determined to be appropriate by the Director of Social Services.~~
37 ~~The health and education summary may also include the name and~~
38 ~~contact information for the educational liaison, as described in~~
39 ~~subdivision (b) of Section 48853.5 of the Education Code, of the~~

1 child's local educational agency. If any other law imposes more
2 stringent information requirements, then that section shall prevail.

3 ~~(b) Additionally, a court report or assessment required pursuant~~
4 ~~to subdivision (g) of Section 361.5, Section 366.1, subdivision (d)~~
5 ~~of Section 366.21, or subdivision (e) of Section 366.22 shall~~
6 ~~include a copy of the current health and education summary~~
7 ~~described in subdivision (a). With respect to a nonminor dependent,~~
8 ~~as described in subdivision (v) of Section 11400, a copy of the~~
9 ~~current health and education summary shall be included in the~~
10 ~~court report only if and when the nonminor dependent consents in~~
11 ~~writing to its inclusion.~~

12 ~~(c) As soon as possible, but not later than 30 days after initial~~
13 ~~placement of a child into foster care, the child protective agency~~
14 ~~shall provide the caregiver with the child's current health and~~
15 ~~education summary as described in subdivision (a). For each~~
16 ~~subsequent placement of a child or nonminor dependent, the child~~
17 ~~protective agency shall provide the caregiver with a current~~
18 ~~summary as described in subdivision (a) within 48 hours of the~~
19 ~~placement. With respect to a nonminor dependent, as described in~~
20 ~~subdivision (v) of Section 11400, the social worker or probation~~
21 ~~officer shall advise the young adult of the social worker's or~~
22 ~~probation officer's obligation to provide the health and education~~
23 ~~summary to the new caregiver and the court, and shall discuss with~~
24 ~~the youth the benefits and liabilities of sharing that information.~~

25 ~~(d) (1) Notwithstanding Section 827 or any other law, the child~~
26 ~~protective agency may disclose any information described in this~~
27 ~~section to a prospective caregiver or caregivers prior to placement~~
28 ~~of a child if all of the following requirements are met:~~

29 ~~(A) The child protective agency intends to place the child with~~
30 ~~the prospective caregiver or caregivers.~~

31 ~~(B) The prospective caregiver or caregivers are willing to~~
32 ~~become the adoptive parent or parents of the child.~~

33 ~~(C) The prospective caregiver or caregivers have an approved~~
34 ~~adoption assessment or home study, a foster family home license,~~
35 ~~certification by a licensed foster family agency, or approval~~
36 ~~pursuant to the requirements in Sections 361.3 and 361.4.~~

37 ~~(2) In addition to the information required to be provided under~~
38 ~~this section, the child protective agency may disclose to the~~
39 ~~prospective caregiver specified in paragraph (1), placement history~~
40 ~~or underlying source documents that are provided to adoptive~~

1 parents pursuant to subdivisions (a) and (b) of Section 8706 of the
2 Family Code.

3 ~~(e) The child's caregiver shall be responsible for obtaining and~~
4 ~~maintaining accurate and thorough information from physicians~~
5 ~~and educators for the child's summary, as described in subdivision~~
6 ~~(a), during the time that the child is in the care of the caregiver.~~
7 ~~On each required visit, the child protective agency or its designee~~
8 ~~family foster agency shall inquire of the caregiver whether there~~
9 ~~is any new information that should be added to the child's summary~~
10 ~~as described in subdivision (a). The child protective agency shall~~
11 ~~update the summary with the information as appropriate, but not~~
12 ~~later than the next court date or within 48 hours of a change in~~
13 ~~placement. The child protective agency or its designee family~~
14 ~~foster agency shall take all necessary steps to assist the caregiver~~
15 ~~in obtaining relevant health and education information for the~~
16 ~~child's health and education summary as described in subdivision~~
17 ~~(a). The caregiver of a nonminor dependent, as described in~~
18 ~~subdivision (v) of Section 11400, is not responsible for obtaining~~
19 ~~and maintaining the nonminor dependent's health and educational~~
20 ~~information, but may assist the nonminor dependent with any~~
21 ~~recordkeeping that the nonminor requests of the caregiver.~~

22 ~~(f) At the initial hearing, the court shall direct each parent to~~
23 ~~provide to the child protective agency complete medical, dental,~~
24 ~~mental health, and educational information, and medical~~
25 ~~background, of the child and of the child's mother and the child's~~
26 ~~biological father if known. The Judicial Council shall create a form~~
27 ~~for the purpose of obtaining health and education information from~~
28 ~~the child's parents or guardians at the initial hearing. The court~~
29 ~~shall determine at the hearing held pursuant to Section 358 whether~~
30 ~~the medical, dental, mental health, and educational information~~
31 ~~has been provided to the child protective agency.~~